

**EXHIBIT TO PLAINTIFF'S
OBJECTION TO DEFENDANT'S
DEPOSITION DESIGNATIONS**

10-18-2007 Sepanski Dr.txt

15 Q. How many years ago was that?
16 A. That was between the years of 1993 and 1996.
17 Q. So other than Mr. Bengston, you've only
18 treated one other patient in your career who
19 was diagnosed with ICE syndrome?
20 A. That's correct.
21 Q. And it's true that you did not diagnose
22 Mr. Bengston with ICE syndrome, correct?
23 A. That's correct.

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1 Q. Isn't it true also that many ophthalmologists
2 will go their entire career without ever
3 seeing a patient suffering from ICE syndrome?

4 MR. ADAMS: Object to the form.
5 Calls for speculation.

6 Q. You can answer.

7 A. Yes.

8 Q. You testified earlier in your deposition that
9 if -- and I wrote down, knowing what I know
10 now, you probably would have -- Mr. Bengston
11 probably would have needed surgery when you
12 first saw him. What led you to believe that?

13 A. Say that again.

14 Q. I just wrote down when you were testifying
15 when Mr. Adams was asking you questions
16 earlier, you testified something to the effect
17 that knowing what I know now, Mr. Bengston
18 probably would have needed surgery when you
19 first saw him. I wondered what your basis for
20 that opinion was.

21 A. I don't remember making that statement.

22 Q. You don't remember --

19 and that is the affidavit that you completed earlier this
20 year. What was the reason that you submitted that
21 affidavit?

22 MR. ADAMS: I object to the form. Can you ask
23 that differently?

24 BY MR. OLIVER

25 Q What was the reason that you signed that 17

1 affidavit?

2 A I don't understand -- for Kyle Bengtson.

3 Q And who prepared this affidavit for you?

4 A I prepared it, I edited it, and then of course,
5 Mr. Adams helped me clarify things on it. But the bottom
6 statement here, you know, which I reviewed all the charts,
7 the bottom statement, that is my statement.

8 Q And you said you edited it. Do you have a copy of
9 the draft affidavit?

10 A I don't have a copy of my draft affidavit. My
11 draft affidavit was simply a complete chart review,
12 indicating everything that's in this chart in sort of a long
13 format, okay. It was a historical review indicating what
14 had transpired from the day he saw Dr. Bazemore until the
15 day he saw Dr. Sepanski; it was quite lengthy.

16 Q Do you have a copy of that?

17 A I don't have a copy with me, but I could certainly
18 get one if you need it.

19 Q Sure. Could you get that -- I guess I will give
20 you my address.

21 A Do you have a copy?

22 MR. ADAMS: I don't have a copy. I don't have a
23 copy on me, and I'm trying to think if I even have a
24 copy at home.

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18

1 BY MR. OLIVER

2 Q Okay. Can you remember, since we don't have a
3 copy of that document to look at, what, if anything, was
4 left out of this affidavit that was in the larger writings
5 that you had?

6 A Certainly the bottom line was, you know, he was
7 suffering from intermittent angle closure glaucoma. From
8 the time he saw Dr. Bazemore, you know, like I said, I had,
9 you know, sort of outlined every single visit, practically,
10 what he presented with, that I indicated how there was a
11 delay for about seven months before he was treated when he
12 presented to Dr. Sepanski with a high elevated intraocular
13 pressure. It simply reflects his whole history from the day
14 he saw Dr. Bazemore to the time he saw Dr. Sepanski. Okay.
15 But the bottom line is, he was suffering from intermittent
16 angle closure glaucoma, which resulted in his vision loss.

17 Q Okay. Did you sign any previous affidavits?

18 A I did not. This is the only one that was signed
19 under oath.

20 Q Do you have a copy of that, of your notes that
21 you've just described at your office?

22 A I could see if I could find it.

23 Q We may need to take a break and see if you can.

24 A They are not in this office.

25 Q Right, right, at your --

19

1 A I mean, if you see all my paper work, it's all
2 over the place.

3 Q Right.

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4 A It's probably in the -- I don't know where it is.
5 But I certainly can try to produce it. It should be on my
6 emails to my business administrator, but I could find it.
7 And it was my long edification of everything that had
8 transpired throughout this course.

9 MR. OLIVER: Can we get off the record real quick?

10 (off the record.)

11 BY MR. OLIVER

12 Q What records did you review in formulating your
13 opinion that you've just given?

14 A Right. I reviewed every single record that was
15 mentioned in my affidavit.

16 Q Okay. Did you review any other records other than
17 the ones mentioned in the affidavit?

18 A No.

19 Q Who provided those records to you?

20 A I had my own records from my office, and I had
21 requested records from the other physicians and I requested
22 records through Mr. Adams.

23 Q And why did you request records from other
24 physicians?

25 A Anytime I see a new patient, I need to know what
20

1 had transpired previously, so that's my standard of care.

2 Q Okay. Was there any reason in particular you
3 requested additional records from Mr. Adams?

4 A Well, the reason was because there has been some
5 question about Kyle Bengtson's care.

6 Q And when did you receive all of your records in
7 this case?

8 A I don't know the particular dates, but several
9 months ago when his case came up.

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22 Mr. Adams?

23 A The discussion was, you know, could Kyle Bengtson
24 have been undergoing episodes of angle closure glaucoma at
25 the time of his visit with Dr. Bazemore.

29

1 Q And what was your initial impression?

2 A My initial impression was certainly with the
3 complaints of halos, blurred vision, et cetera, but normal
4 pressures, certainly there is a chance of him having
5 intermittent angle closure glaucoma, but you can also have
6 those changes with refractive changes in the glasses. Okay,
7 but given the fact that, you know, he presented with
8 increased intraocular pressures, you know, the most likely
9 cause was him suffering from the intermittent angle closure
10 glaucoma.

11 Q And the words in your affidavit, again, was
12 probably suffering from -- are those your words?

13 A Those are my words.

14 Q Do you have any explanation as to why those exact
15 words were used by Dr. Sepanski?

16 A I have no explanation, but these are my words.

17 Q Did any of Mr. Bengtson's attorneys suggest those
18 words to you?

19 A No. Those are my words.

20 Q What do those words, "was probably suffering from
21 intermittent angle closure glaucoma" mean to you, if you
22 could just describe what those words mean to you to the
23 jury?

24 A Can you say that again?

25 Q The words "was probably suffering from

30

1 intermittent angle closure glaucoma."

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24 A I have -- not in my practice. In fellowship and
25 in residency.

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1 Q How long have you been a practicing
2 ophthalmologist?

3 A Seven years.

4 Q Is eye syndrome difficult to diagnose?

5 A Certainly eye syndrome can be difficult to
6 diagnose. The first signs would be sort of a hammered look
7 appearance in the cornea. You can have sort of a hammered
8 sheen appearance on the cornea, okay, on slit-lamp
9 examination, but if you compare it to the other eye, you
10 should be able to detect that. You will start to get some
11 stretch holes in the iris. All right. You will start to
12 get some PAS formation, which, you know, you need to look
13 with an gonioscopy to see that. So it can be a difficult
14 thing to diagnose. But when you have symptoms, you have to
15 keep track of patients with glaucoma symptoms.

16 Q Sure. Can trauma cause eye syndrome?

17 A Trauma cannot cause eye syndrome, but it can cause
18 glaucoma.

19 Q And can it cause intermittent angle closure
20 glaucoma?

21 A It depends on the amount of trauma. If you had
22 trauma to the eye -- I understand that he had laceration to
23 the bridge of his nose, but it never mentioned an eye
24 injury.

25 Q Do you, in your practice, deal with optometrists?

36

1 A We have optometrists that refer patients to us for
2 opinions.

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1 of this deposition; correct?
 2 Because this has been asked
 3 and answered.

4 MR. WHITE: I don't know that it
 5 has. I've read his previous
 6 deposition. I don't know that
 7 it was asked whether he had
 8 any correspondence.

9 MR. ADAMS: Okay. Well, you can
 10 ask him. I thought it had.
 11 Go ahead.

12 Q. My question is if you got a letter or if
 13 you sent a letter on behalf of
 14 Mr. Bengston, would it be in the file
 15 that's there in front of you?

16 A. Every -- All my correspondence is in here.
 17 The affidavit, no, I don't think it's in
 18 here. That was faxed to him which was
 19 faxed to you guys.

20 Q. Did you not keep a copy of it after you
 21 faxed it?

22 A. I don't have a copy of it, no.

23 Q. (E) is any and all affidavits, draft

1 matter?
 2 A. No. Except for the one that we brought.

3 Q. The short affidavit?

4 A. Yeah.

5 Q. The final affidavit?

6 A. Correct. The final.

7 Q. Well, let me ask you this: Prior to it
 8 being typed -- and Defendant's Exhibit 2 is
 9 in a typed format -- did you ever handwrite
 10 an affidavit that you sent to Mr. Adams or
 11 anyone else?

12 A. No handwritten ones. I always sent it like
 13 this.

14 Q. How did it get in this format?

15 A. I typed it up. And I don't have copies of
 16 that.

17 Q. Where did you type it up at?

18 A. On my computer, which I didn't save
 19 anything.

20 Q. You don't save anything on your computer?

21 A. Not this stuff. It's all sent here to

22 him. And I don't want anything to do with
 23 saving any type of legal files. All I need

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1 affidavits or writings relating to your
 2 opinions regarding Kyle Bengston. And
 3 you -- Let me do this. Let me show you
 4 what I've marked as Defendant's Exhibit 2
 5 to your deposition.

6 (Defendant's Exhibit 2 was marked
 7 for identification.)

8 A. Uh-huh (positive response).

9 Q. Do you recognize that?

10 A. I do.

11 Q. And is that the affidavit that you're
 12 referring to in regards to Kyle Bengston?

13 A. This is.

14 Q. And I'm going to come back and ask you some
 15 more detailed questions about that --

16 A. And it --

17 Q. I'm sorry?

18 A. This affidavit I did not have

19 Dr. Bazemore's record in front of me when I
 20 wrote it. This is all from recollection.

21 Q. Other than that affidavit, which is
 22 Defendant's Exhibit 2, were there any other
 23 affidavits that you've drafted in this

1 to have is his medical records.

2 Q. Why don't you want to have anything to do
 3 with saving legal files?

4 A. Because I have everything I need in here.

5 Q. And you're referring to your chart?

6 A. My medical records.

7 Q. Well, when you typed it up -- When you
 8 typed what you typed -- You have a computer
 9 here in your office. Did you type it on
 10 this computer here in your office?

11 A. No, I didn't.

12 Q. Where did you type it?

13 A. At my home.

14 Q. Your home computer?

15 A. (Witness nods head).

16 Q. And did you not save it? Did you not push
 17 save when you typed it?

18 A. That's not saved, no.

19 Q. Did you delete it for some reason?

20 A. I don't want any files that are not
 21 business related on my home computer.

22 Q. So my question is, did you delete --

23 A. Yeah. I deleted it --

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<p>1 Q. You deleted it?</p> <p>2 A. -- after I sent it to him. So he has the</p> <p>3 files, not me.</p> <p>4 Q. And so just so I'm clear, let me get you to</p> <p>5 mark on this affidavit where -- everything</p> <p>6 that you typed on the affidavit.</p> <p>7 A. I typed everything.</p> <p>8 Q. You typed everything?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Well, do you mind if I look at it?</p> <p>11 This part up top here, which is what we</p> <p>12 call the style of the case, where it says</p> <p>13 Kyle --</p> <p>14 A. I didn't do that. There was -- I didn't do</p> <p>15 that part. That was given to me.</p> <p>16 Q. That was given to you?</p> <p>17 A. Right.</p> <p>18 Q. And then the first paragraph that says I am</p> <p>19 Phil Alabata, DO, did you write that --</p> <p>20 type that?</p> <p>21 A. Okay. Let's back up. There was a template</p> <p>22 format for me to use and I edited the whole</p> <p>23 thing. And all the words -- Everything</p>	<p>1 came from the template format.</p> <p>2 A. Okay. Give me a few minutes.</p> <p>3 Q. Take your time, please.</p> <p>4 (Brief pause.)</p> <p>5 A. Everything that's bracketed are my words.</p> <p>6 And, again, that's before -- I didn't have</p> <p>7 Dr. Bazemore's records in front of me.</p> <p>8 That was all from recall.</p> <p>9 Q. All right. And you also underlined which I</p> <p>10 do not have available. Were those your</p> <p>11 words?</p> <p>12 A. That's correct.</p> <p>13 Q. Was the rest of that paragraph in the</p> <p>14 template format that you described?</p> <p>15 A. As far as I remember.</p> <p>16 Q. Did someone tell you to delete your</p> <p>17 opinions that you created at your home, or</p> <p>18 is that something that you did on your own?</p> <p>19 A. It's something I did on my own. No one</p> <p>20 told me to delete it. I don't want</p> <p>21 anything at my home.</p> <p>22 Q. Is there any reason you didn't print it out</p> <p>23 and keep it in the file?</p>
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<p>1 related to his medical case are mine -- my</p> <p>2 words.</p> <p>3 Q. You said there was a template format for</p> <p>4 you to use. What are you talking about?</p> <p>5 A. Well, a template is a standardized format</p> <p>6 that has the form that you needed to make</p> <p>7 that affidavit. And that's what I used.</p> <p>8 Q. Do you still have the template --</p> <p>9 A. I do not.</p> <p>10 Q. -- format?</p> <p>11 A. I do not.</p> <p>12 Q. Who provided that to you?</p> <p>13 A. Mr. Adams.</p> <p>14 Q. And do you remember what the template</p> <p>15 format said?</p> <p>16 A. I don't remember what it said. I did edit</p> <p>17 it. I put everything in my own words. But</p> <p>18 all this top stuff for sure is --</p> <p>19 Q. Well, what I'd like for you to do, then, if</p> <p>20 you could -- if you could review</p> <p>21 Defendant's Exhibit Number 2 for me and if</p> <p>22 you could indicate everything on there that</p> <p>23 are your words as opposed to words that</p>	<p>1 A. No. I don't put anything in this except</p> <p>2 medical or any correspondence that was</p> <p>3 requested in here.</p> <p>4 Q. You wouldn't consider that correspondence</p> <p>5 between you and the attorney for</p> <p>6 Mr. Bengston?</p> <p>7 A. Well, I sent it to him. He has a copy and</p> <p>8 obviously you have a copy. There's no need</p> <p>9 for me to keep a copy of it.</p> <p>10 (Defendant's Exhibit 1 was marked</p> <p>11 for identification.)</p> <p>12 Q. Let me show you what I've marked as</p> <p>13 Defendant's Exhibit 1. Do you recognize</p> <p>14 that?</p> <p>15 A. I do.</p> <p>16 Q. What is that?</p> <p>17 A. That's when I faxed this to Mr. Adams.</p> <p>18 Q. That's when you faxed Defendant's Exhibit</p> <p>19 2?</p> <p>20 A. Exactly right.</p> <p>21 Q. And that's dated October 12, 2007; is that</p> <p>22 correct?</p> <p>23 A. That's correct.</p>

1 Q. And that was done after your first
 2 deposition was taken in this case?
 3 A. That's correct. At the request of your
 4 partner.
 5 Q. That's right. Blake Oliver was here the
 6 first time --
 7 A. That's correct.
 8 Q. -- taking your deposition?
 9 A. That's correct.
 10 Q. Let me say this. It's difficult for the
 11 court reporter to take down if we're both
 12 speaking at the same time --
 13 A. Right.
 14 Q. -- so if you'll wait.
 15 A. Sure.
 16 Q. Is there any reason -- I know Mr. Oliver,
 17 from reading your deposition, had asked
 18 that you fax it to us. Is there any reason
 19 that you chose to fax the affidavit,
 20 Defendant's Exhibit 2, to Mr. Adams instead
 21 of faxing it to Mr. Oliver?
 22 A. It's Kyle's lawyer.
 23 Q. I'm sorry?

1 just send it to him if possible.
 2 Q. Okay. In Defendant's Exhibit 1, if you'll
 3 take a look at that. I wanted to ask
 4 you -- You begin that letter by saying this
 5 is my original planned affidavit.
 6 A. Uh-huh (positive response).
 7 Q. What do you mean by that term original
 8 planned affidavit?
 9 A. That was my first affidavit that I had
 10 written out, planned for the case here.
 11 And, of course, it was based on my review
 12 of Dr. Bazemore's notes, which I -- which
 13 Mr. Adams showed it to me when he had a
 14 meeting with me, which I did not have
 15 available at the time that I wrote out
 16 my -- this first affidavit.
 17 Q. And you're referring to Defendant's Exhibit
 18 2?
 19 A. That's correct.
 20 Q. And is there any reason why you didn't have
 21 Mr. -- Dr. Bazemore's records when you
 22 drafted that affidavit, Defendant's Exhibit
 23 2?

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1 A. Because it's Kyle's lawyer. That's why I
 2 faxed it to him.
 3 Q. Is there some distinction in your mind
 4 between faxing it to Kyle's lawyer as
 5 opposed to faxing it to Mr. Oliver?
 6 A. The end report -- the result is everything
 7 is unchanged. It was faxed to him. The
 8 original was faxed to you. There's no
 9 difference.
 10 MR. ADAMS: And I can tell you
 11 that apparently it was an
 12 off-the-record agreement. I
 13 didn't see it in his
 14 affidavit. But Blake and I
 15 agreed that that's the way it
 16 would be handled. And this is
 17 Kyle's physician and anything
 18 Kyle's physician generates he
 19 has a superior right to and I
 20 asked to see it first and that
 21 was our agreement.
 22 A. That's correct. It was our agreement. He
 23 didn't officially ask. He asked if I could

1 A. I didn't have it available. It wasn't
 2 provided to me.
 3 Q. But you had seen those records?
 4 A. That's correct.
 5 Q. When had you seen the records?
 6 A. When Mr. Adams came over. It was at the
 7 first --
 8 MR. ADAMS: Yeah. This has all
 9 been asked and answered. We
 10 talked about this the first
 11 go-around.
 12 MR. WHITE: Well, I would
 13 respectfully disagree with
 14 you. I've read the
 15 deposition. I don't believe
 16 that it was asked and
 17 answered.
 18 A. It was.
 19 Q. When did you draft Defendant's Exhibit 2?
 20 A. I don't know the exact date, but it was
 21 after -- after his visit with me.
 22 Q. How many visits with Mr. Adams had you had
 23 before you drafted Defendant's Exhibit 2?